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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|--|-------------|----------------------|----------------------------|------------------------|
| 10/810,526   | 03/27/2004  | Julian James Orbach  | 403104-A-01-US<br>(Orbach) | 1176                   |
| 47523 7590 02/20/2008<br>JOHN C. MORAN, ATTORNEY, P.C.<br>4120 EAST 115 PLACE<br>THORNTON, CO 80233-2623 |             |                      | EXAMINER<br>DOAN, KIET M   |                        |
|  |             |                      | ART UNIT<br>2617           | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>02/20/2008    | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/810,526

Applicant(s)

ORBACH, JULIAN JAMES

Examiner

Kiet Doan

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-22, 34-44, 56, 57 and 60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22, 34-44, 56, 57 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This office action is response to Remarks file on 12/06/2007.

Claims 1-11, 23-33, 45-55, 58-59, 61-63 are cancelled.

### *Response to Arguments*

2. Applicant's arguments filed 12/06/07 have been fully considered but they are not persuasive.

In response to applicant's argument and request the office to point out the disclose are found from Coombes and Rutledge reference which teach in claim 12.

Examiner respectfully and further point out that

**Coombes teaches** "answering the incoming call by the wireless handset in response to a predefined amount of movement of the user as detected by the wireless handset when the telecommunication terminal is not engaged in another call;

muting an audio path of the answered call from communication with the user; and transmitting a message that is selected by the user to the calling party. (Abstract, Paragraphs [0008], [0011-0012], [0015] teach mobile communication device answering the incoming call, the users put the caller on hold which means as "muting an audio path of the answered" and transmitting a pre-recording message to the caller wherein the message can be any phrase that the users of communication device wish to record or desire. However, Coombes **silent on** "message that is selected by the user to the calling party".

**Rutledge teach**” message that is selected by the user to the calling party”  
(Abstract, Paragraphs [0012], [0019-0020] teach the users can select answering message by pressing the button 22 and depend on the number of time press the users can select different message transmitted to the caller).

Therefore, examiner interpreted “answering the incoming call by the wireless handset in response to a predefined amount of movement of the user as detected by the witless handset when the telecommunication terminal is not engaged in another call;

muting an audio path of the answered call from communication with the user; and transmitting a message that is selected by the user to the calling party” as broadest reasonable interpretation and it is proper.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 12-22, 34-44, 56-57, 60** are rejected under 35 U.S.C. 103(a) as being unpatentable over Coombes (Pub. No. 2004/0198461) in view of Rutledge et al. (US 2002/0142756 A1).

Consider **claims 12, 56, 60**. Coombes teaches a method for alerting a calling party of a delay before an incoming call will be answered by a user of a called wireless handset, comprising the steps of:

answering the incoming call by the wireless handset in response to a predefined amount of movement of the user as detected by the wireless handset when the telecommunication terminal is not engaged in another call;

muting an audio path of the answered call from communication with the user; and transmitting a message that is selected by the user to the calling party. (Abstract, Paragraphs [0008], [0011-0012], [0015] teach mobile communication device answering the incoming call, the users put the caller on hold which means as "muting an audio path of the answered" and transmitting a pre-recording message to the caller wherein the message can be any phrase that the users of communication device wish to record or desire. However, Coombes **silent on** "message that is selected by the user to the calling party".

**Rutledge teach** "message that is selected by the user to the calling party" (Abstract, Paragraphs [0012], [0019-0020] teach the users can select answering message by pressing the button 22 and depend on the number of time press the users can select different message transmitted to the caller).

Therefore, it would have been obvious at the time that the invention was made that person having ordinary skill in the art to modify Coombes and Rutledge system, such that answering the incoming call by the wireless handset in response to a

predefined amount of movement of the user as detected by the witless handset when the telecommunication terminal is not engaged in another call and muting audio and transmitting a message that is selected by the user to the calling party to provide means for the convenient and flexible of the handset users that capable response to the caller without talking for example: meeting, theater or church .i.e.,

Consider **claims 13, 35**. Rutledge teaches the method of claim 1 further comprises the step of maintaining the incoming call from the calling party with the audio path muted to the user; and allowing audio communication by the user with calling party in response to another input from the user (Paragraph [0012], [0025]).

Consider **claims 15, 37**. Rutledge teaches the method of claim 1 wherein the message is an audio message and the audio message is transmitted via the audio path to the calling party (Paragraph [0018-0020]).

Consider **claims 17, 39**. Rutledge teaches the method of claim 5 wherein the step of inserting comprises converting the time to audio information for insertion into the predefined message (Paragraphs [0025]).

Consider **claims 18, 40**. Coombes teaches the method of claim 6 further comprises the step of recording the predefined message (Paragraph [0011] teach recording message).

Consider **claims 19, 21, 41, 43, 57**. The method of claim 1 wherein the message is a text message (Official notice and well know in the art that text message can be send by telecommunication terminal via text message link).

Consider **claims 22, 44**. Coombes teaches the method of claim 9 further comprises the step of entering the predefined message (Paragraph [0011]).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiet Doan whose telephone number is 571-272-7863.

The examiner can normally be reached on 8am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on 571-272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kiet Doan  
Patent Examiner



JOSEPH FEILD  
SUPERVISORY PATENT EXAMINER